



Agenda Date: 08/19/09
Agenda Item: 8F

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE CLEAN ENERGY PROGRAM)
CUSTOMER ON-SITE RENEWABLE ENERGY (CORE) –)
REQUEST FOR EXTENSION OF COMPLETION)
TIMEFRAME FOR EXISTING COMMITMENT –)
NEW JERSEY MEADOWLANDS COMMISSION)

ORDER

DOCKET NO. EO09070573

Robert R. Ceberio, Executive Director, New Jersey Meadowlands Commission, Lyndhurst, NJ

BY THE BOARD:

By this Order, the Board of Public Utilities ("Board") considers and renders its decision regarding a request of the New Jersey Meadowlands Commission ("Petitioner" or "NJMC") for a second extension of its Customer On-site Renewable Energy ("CORE") rebate commitment deadline in order to complete a solar project.

BACKGROUND

The NJMC is a State agency focused on enhancing environmental quality through the implementation of clean forms of energy. In April 2006, the NJMC announced a major initiative to develop 20 MW of new sources of renewable energy in the Meadowlands District by 2020. The NJMC states that this initiative is anticipated to be an important part of the region's economic growth strategy while also reducing its carbon footprint. NJMC also states that this initiative is intended to serve as an example of progressive energy planning for regional authorities and communities throughout New Jersey.

The NJMC received a CORE program commitment letter for an estimated rebate of \$1,570,500 as authorized by the Board in I/M/O Petition of New Jersey Meadowlands Commission for an Allocation of 2008 Rebate Funds, Docket No. EO07070560 (Aug. 24, 2007). This rebate was intended to assist with the development of a 700 kW solar facility (application # MM05109). The rebate commitment length was 12 months from the date of the commitment letter. That deadline was extended to August 1, 2009 by letter dated July 17, 2008. The NJMC now claims

that it was unable to complete its project prior to the August 1, 2009 deadline due to unexpected events described more fully below.

By letter dated July 1, 2009, the NJMC filed a timely petition with the Board requesting an additional 12 month extension of the rebate commitment to August 1, 2010. The NJMC indicates that it completed a competitive Request for Proposals ("RFP") process and selected a vendor, Epuron, LLC ("Epuron"), to perform project installation activities. The NJMC claims that it entered into a contract with Epuron and was ready to move forward with project development. However, an issue unforeseen by the NJMC arose involving the ability to site the facility on property that contained a utility easement held by the Transcontinental Gas Pipeline Company ("Transco"). Prior to Transco's objections, the NJMC believed that the available property could accommodate the solar project without interfering with Transco's use of the easement. Therefore, the NJMC did not anticipate an issue.

The NJMC claims it worked diligently to address Transco's concerns regarding its easement as well as Epuron's concerns that the requested modifications would substantially increase project costs. Unfortunately, despite substantial discussions over several months, the NJMC states that the parties were unable to resolve key development issues. As a result, the NJMC and Epuron determined that they would terminate their relationship by allowing the contract to lapse on its own terms.

Notwithstanding these unanticipated delays, the NJMC now proposes, if approved by the Board, to develop two complementary solar projects as an alternative to the originally proposed solar project. The first project would consist of an estimated 150 kW canopy solar system covering the visitor and administrative parking lots at the NJMC campus in Lyndhurst, NJ. The NJMC states that it is prepared to procure vendor services in the next few months and plans to implement this project expeditiously. The NJMC will construct the second project on the long-closed 1-A Landfill, which is located on the NJMC-owned property in Kearny. The landfill has the capacity to house a facility with an estimated 5 MW nameplate capacity. The NJMC informs the Board that an RFP for this project was recently released and has generated considerable interest from potential bidders and other interested parties. The NJMC represents that these projects will provide significant environmental and economic benefits, as well as provide further demonstration of the State's dedication to the growth of renewable energy.

The NJMC requests that the approved estimated CORE rebate of \$1,570,500 be applied to the two proposed projects, with \$383,000 for the canopy project and \$1,187,500 for the 1-A Project. To implement its plans, the NJMC requires an extension of the CORE rebate commitment as well as approval to relocate its system. The NJMC's request, if approved, would make the CORE rebate of \$1,570,500 available to the two proposed projects until August 1, 2010. The NJMC considers the financial incentive provided by the CORE rebate critical to the success of these projects.

On August 7, 2009, the Office of Clean Energy ("OCE") engaged in negotiations with the NJMC. These negotiations were memorialized by the NJMC in a letter dated August 12, 2009, which included the following conditions agreed to by the NJMC and OCE, subject to the approval of the Board:

After discussion, the NJMC and the Office of Clean Energy ("OCE") agreed that the OCE would recommend to the Board that the following conditions to be attached to the twelve-month extension:

- 1) The rebate amount would be reduced to \$1,413,450 (a reduction of 10%);
- 2) The NJMC would direct the economic benefits that it realizes from these projects to fund further renewable energy and energy efficiency projects in the Meadowlands District;
- 3) The NJMC would have flexibility and discretion with respect to the amount of the rebate to be allocated to each of the two solar projects (1-A Landfill and the Parking Lot canopy); and,
- 4) The OCE staff would place this matter on the Board's August 19, 2009 agenda for consideration.

In accord with its agreement, the OCE recommends Board approval of the NJMC's petition for a second extension of its CORE rebate commitment to be relocated to its two proposed projects. The OCE further recommends a reduction of 10%, which will result in an estimated rebate of \$1,413,450 that may be allocated at the NJMC's discretion to one or both of the proposed projects. The OCE makes its recommendation contingent on the NJMC's commitment to direct the economic benefits realized by these two projects to fund further clean energy projects in the Meadowlands District.

DISCUSSION AND FINDINGS

The petition in this matter relates to a rebate under the CORE program, which was designed to support the sustained and orderly development of markets for distributed renewable electric generation in New Jersey. The program offered financial incentives to New Jersey public utility customers investing in eligible, on-site renewable electricity generation using photovoltaic, wind, biomass, and fuel cell systems. Rebates were offered to make renewable energy investments more cost-effective by offsetting a portion of the initial installation cost as well as a number of market support services, including inspections and the facilitation of registration for renewable energy credits. CORE rebates were not intended to cover the entire system cost; rebates were intended to reduce the installation cost in order to make cost-effective investments available for as wide an array of ratepayers as possible.

To be eligible for a CORE rebate, an applicant must be a ratepayer of an electric or natural gas utility regulated by the Board. The CORE program serves residential, commercial, institutional, and industrial market segments. The program is available to private and public (school, State, county, and municipal) customers in all rate classes.

The CORE program experienced exponential program growth in the four years preceding its termination. In particular, the demand for rebates from public sector applicants increased so significantly that rebates for public sector projects were reduced. In light of then-existing funding concerns and the backlog of solar projects which existed, the policy on extensions was intended to prevent the reservation of CORE funding for solar projects that are unlikely to be completed at the expense of other projects that could be approved at lower rebate levels.

The CORE Program Guidelines ("the Guidelines") state that all public projects over 10 kW in size will be given twelve calendar months, starting from the date on the rebate commitment letter, for project completion, which is defined as the date when the Program Manager receives the final rebate application. Customer On-site Renewable Energy (CORE) Program Update, 14 (Aug. 17, 2006). If the public entity cannot complete the project within the initial twelve month period, that public entity may apply for an extension. Ibid. Extension applications "must include detailed documentation regarding the reasons for delay." Ibid.

The Guidelines state that the Program Manager will grant extensions when the applicant can document significant progress toward completion of the project and the delay was unavoidable and unforeseeable at the time of the rebate application. Id. at 13-14. In determining whether significant progress has been made, the Program Manager looks at a number of specific factors: whether physical construction has started at the customer's site; whether irrevocable orders have been placed with manufacturers of the major items of equipment; whether construction permits have been approved; whether engineering and design work has started and progressed to a significant degree; and whether material has been received from the manufacturer (either on-site or in storage). Ibid. In addition to these factors, when the applicant is a public entity, the Program Manager will also consider "procurement (i.e. customer contracting) and/or related litigation delays." Id. at 14. If granted, the initial extension would be for twelve calendar months. Ibid. Under the Guidelines, a public entity may receive a second extension in "cases where litigation related to public entity contract award can be documented." Ibid. If granted, this second extension for the public entity applicant would be for six months. Ibid.

In the instant matter, Petitioner seeks a second extension as a result of delays caused by the unforeseen issues related to the Transco easement. A second extension application for any reason other than public contract litigation constitutes a request for a waiver of the Guidelines, which requires the Board to engage in a two pronged analysis. See N.J.A.C. 14:1-1.2(b)(1). The Board reviews Petitioner's request as follows.

First, the Board considers whether Petitioner's request is in accord with the general purpose and intent of the Guidelines. See N.J.A.C. 14:1-1.2(b)(1).

To determine the general purpose and intent of the Guidelines, the Board looks to its policy on initial extensions. Initial extensions will be granted when the delay was unavoidable and unforeseeable at the time of the rebate application and when the applicant can document significant progress toward project completion. The Guidelines suggest that extensions are reasonable when the delay was beyond the control of the applicant, but where the applicant has made a good faith effort to advance the project.

Here, the NJMC stated that it had believed that the property could accommodate the project without interfering with Transco's use of the easement. However, Transco objected to the facility's location and the NJMC was unable to resolve the matter in a manner that would accommodate all parties involved. The Board HEREBY FINDS that the delay was unavoidable and unforeseen.

To document its progress, the NJMC claims that it entered into a contract and was ready to move forward with project development when Transco raised objections. The NJMC completed a competitive RFP process and selected a vendor to perform project installation activities. When it was unable to resolve the issues raised by Transco, the NJMC terminated its relationship with its vendor. The Board FURTHER FINDS that Petitioner's representations appear to be substantial, good faith efforts toward project completion.

In addition, the Board recognizes the Guidelines' two limitations on second extensions. First, second extensions are only available for public entities, such as Petitioner. Second, the Guidelines limit second extensions to documented instances of public contract litigation. The use of public contract litigation as a justification shows the Board's intent to extend deadlines for public entities where the unforeseen delays are associated with the peculiarities of public contracting and procurement. In this matter, the NJMC had completed its RFP and was prepared to move on its project when Transco raised its objections. The NJMC claims that it worked diligently to address Transco's concerns regarding its easement as well as Epuron's concerns that the requested modifications would substantially increase project costs. Despite numerous discussions over several months, the NJMC states that the parties were unable to resolve key development issues. In light of the foregoing, the Board HEREBY FINDS Petitioner's request for a second extension in accord with the purpose and intent of the Guidelines governing second extensions.

The Board also considers whether full compliance with the Guidelines would adversely affect the interest of the public. See N.J.A.C. 14:1-1.2(b)(1). The development of clean energy projects by the NJMC is consistent with New Jersey's Energy Master Plan, which calls for New Jersey agencies to take the lead in renewable energy development. A significant portion of this project will make beneficial use of landfill space. The NJMC has stated that it considers the financial incentive provided by the CORE rebate critical to the success of these projects. The Board considers the rigid application of the Guidelines contrary to the public interest, which would otherwise be well-served by the project. Therefore, the Board HEREBY FINDS that Petitioner's project, if completed, will provide a public benefit which may not be realized without a CORE rebate.


Finally, the Board FURTHER FINDS that the additional conditions agreed to by the OCE and the NJMC will increase the benefits of this project. The rebate amount shall be reduced to lessen the impact on ratepayers; the NJMC shall direct the economic benefits that it realizes from these projects to fund further renewable energy and energy efficiency projects in the Meadowlands District in furtherance of the Energy Master Plan; and the NJMC shall have discretion to allocate the rebate to each of the two solar projects, which will enable the NJMC the needed flexibility to develop this project expeditiously.


Thus, the Board HEREBY CONCLUDES that Petitioner's representations qualify it for a waiver of the Guidelines so as to allow for a second extension of the rebate commitment deadline. Accordingly, the Board HEREBY APPROVES Staff's recommendation. The Board HEREBY DIRECTS the Program Manager to issue a rebate commitment extension to Petitioner, for application MM05109. The extension shall reflect a reduced rebate of \$1,413,450 with an expiration date of August 1, 2010. The Board HEREBY GRANTS the NJMC the flexibility to allocate the CORE rebate between the two proposed projects discussed above, but the Board

HEREBY ORDERS that this approval shall be contingent on the NJMC's commitment to direct the economic benefits realized by these two projects to fund further renewable energy and energy efficiency projects in the Meadowlands District.

DATED: 11/5/09


BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public
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